

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIVIDAD SILVA, JR.,

Petitioner,

v.

LESTER C. WARD, Warden,
Federal Correctional Institution – Oxford,

Respondent.

ORDER

14-cv-424-wmc

Petitioner Natividad Silva, Jr., seeks habeas corpus relief under 28 U.S.C. § 2241 from his continued confinement at the Federal Correctional Institution at Oxford, Wisconsin. In particular, Silva challenges the 1993 sentence that he received for robbery affecting commerce and use of a firearm during the commission of a violent crime in *United States v. Silva*, 92-cr-342 (N.D. Tex.). In overlapping grounds for relief, Silva appears to contend that relief is warranted for the following reasons: (1) the district court erred by enhancing his sentence as a recidivist pursuant to 18 U.S.C. § 924(c)(1)(C)(i); and (2) he was denied effective assistance of counsel at sentencing when his defense attorney failed to object to the application of this enhancement. Arguing further that he is “actually innocent” of the recidivist enhancement, Silva maintains that he must be resentenced, relying on *Clark v. United States*, No. 13-cv-1026, 2013 U.S. Dist. LEXIS 84494, 2013 WL 3032602 (C.D. Ill. June 17, 2013) and *Carachuri-Rosendo v. Holder*, 560 U.S. 563, 130 S. Ct. 2577 (2010).

Having reviewed all of the pleadings, the court will request an answer, motion or other response from the respondent.

IT IS ORDERED that:

1. The clerk's office will provide a copy of this order to the petitioner. The clerk's office will also send a copy of the petition (Dkt. # 1), the supporting memorandum (Dkt. # 2), and this order to the respondent, Warden Lester C. Ward at FCI-Oxford, the local United States Attorney and the United States Attorney General by certified mail in accordance with Fed. R. Civ. P. 4(i).

2. Within 60 days from the date of service of the petition, respondent shall file an answer, motion or other responsive pleading and shall forward a copy to the petitioner. The answer, motion or other responsive pleading shall state the statutory authority for petitioner's detention in compliance with 28 U.S.C. § 2243. The answer, motion or responsive pleading must otherwise comply with Rule 5 of the Rules Governing Section 2254 Cases and must show cause, if any, why this writ should not issue.¹

3. Whether respondent files an answer, a motion or other response, petitioner may have 30 days from the date shown on the certificate of service in which to file a reply or traverse if he wishes to submit one.

4. For the remainder of this lawsuit, petitioner must send respondent a copy of every paper or document that he files with the court. Once petitioner has learned what lawyer will be representing respondent, he should serve the lawyer directly rather than respondent. The court will disregard any documents submitted by petitioner unless

¹ Pursuant to Rule 1(b) of the Rules Governing Section 2254 Cases in the United States District Courts, a district court may apply these rules to a habeas corpus petition not filed under 28 U.S.C. § 2254, such as one filed under § 2241.

petitioner shows on the court's copy that he has sent a copy to respondent or to respondent's attorney.

5. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 18th day of July, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge